IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5507 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHITUBHAI NARANBHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

1. Special Civil Application No. 5507 of 2004
MR KM SHETH for Petitioner No. 1
Mr.S.P. Hasurkar, AGP, for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 10/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

1. Chhitubhai Naranbhai Patel, through his legal heir Kanchanben Chhitubhai Naranbhai Patel, has filed this petition challenging the order dated 22.3.2004 passed by the Special Land Acquisition Officer, Vadodara. The Special Land Acquisition Officer, by the impugned order, rejected the application filed by the petitioner under Section 28A of the Land Acquisition Act, 1894 ('Act' for short), dated 21.7.1997, on the ground that the petitioner had not produced certified copy of the award passed by the Reference Court on time and had not filed the application within the period of limitation.

2. The facts giving rise to this petition are as under:

3. Shri Chhitubhai Naranbhai Patel, father of the petitioner, was the owner and occupier of the land situated at village Maganand, Taluka Jambusaar, District Bharuch, being Block No.55, admeasuring 2292 sq.mtrs. The land of the petitioner was acquired by the Special Land Acquisition Officer for construction of Jambusar Branch canal of Narmada Project. The Government, therefore, issued a notification under Section 4 of the Act on 19.1.1981. After following the procedure prescribed under the Act, the Special Land Acquisition Officer, by order dated 30.5.1990, in Land Acquisition Case No.12 of 1988, awarded compensation of Rs.1.60 per sq.mtr for non-irrigated land and Rs.2.40 per sq.mtr for irrigated land.

4. As the amount of compensation awarded by the Special Land Acquisition Officer was very meagre and insufficient, some of the claimants of the same notification in respect of the lands of the same village and covered under the same award approached the District Court, Bharuch, by way of Land Reference Cases Nos. 575 of 1992 to 580 of 1992 and 1647 of 1990 to 1667 of 1990 with the claim that they should be awarded Rs.14/per sq.mtrs for their acquired lands. The Reference Court, by judgment and order dated 29.4.1997, partly allowed the references and awarded compensation at the rate of Rs.7.80 per sq.mtrs to the claimants of the said references.

5. Though the petitioner did not file reference case in the Reference Court, yet, in view of the subsequent higher award passed, and in view of the provisions of the Section 28-A of the Act, the petitioner, through his

advocate, on 21.7.1997, filed an application before the Special Land Acquisition Officer claiming that he should be awarded additional compensation at the rate of Rs.7.80 per sq.mtrs. as per the judgment and order dated 29.4.1997 of the Reference Court. In the said application, it was stated that the certified copy of the judgment and order dated 29.4.1997, was not made available and as and when it was made available, the petitioner would supply the same. Thereafter, on 21.7.2000, the advocate of the petitioner submitted certified copy of the judgment and order dated 29.4.1997, passed by the Reference Court with a forwarding letter requesting that, at the time of filing the application, he had not submitted certified copy of judgment and order dated 29.4.1997, and, therefore, certified copy of judgment and order dated 29.4.1997 was sent therewith for doing the needful. Thereafter, nothing was heard from the Special Land Acquisition Officer and, ultimately, the Special Land Acquisition Officer passed the impugned order dated 22.3.2004, wherein, it is stated that the application under Section 28A of the Act has been submitted to the office of the respondent on 21.7.1997, wherein it is stated that as per the letter of the Government, the petitioner had not obtained certified copy of the judgment and award of the Reference Court within the time limit as per the procedure of the Revenue Department of the State Government and, therefore, the application of the petitioner is disposed of i.e. the same is rejected.

6. Being aggrieved and dissatisfied by the said order of the Special Land Acquisition Officer, the petitioner filed the present petition before this Court on 21.4.2004.

7. When the matter was placed before this Court on 29.6.2004, this Court issued notice. Thereafter, the matter was heard on 10.8.2004.

8. We have heard learned advocate, Mr. K.M. Sheth, for the petitioner and learned Assistant Government Pleader, Mr. H.P. Hasurkar, for the respondent.

9. Learned advocate Mr. K.M. Sheth has assailed the impugned order dated 22.3.2004 passed by the Special Land Acquisition Officer on various grounds. He has relied upon Section 28-A of the Act, which reads as under:

"28-A. Redetermination of the amount of compensation on the basis of the award of the Court.-

(1) Where in an award under this Part, the Court

allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the Court;

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard and made an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of Sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

Relying on the aforesaid provision, the learned advocate for the petitioner submitted that the person, who is aggrieved by the award under Section 11 of the Act and who has not filed application to the Collector under Section 18 of the Act, is entitled to claim that the amount of compensation payable to him may be redetermined on the basis of the amount of compensation awarded by the Court. The learned advocate for the petitioner submitted that the petitioner had filed application under section 28A of the Act within the three months from the date of the award of the Reference Court. As per the aforesaid provision also, the claimant has to make an application within three months from the date of the award of the Reference Court. The Reference Court passed the award on 29.4.1997. Admittedly, the petitioner made application under Section 28A of the Act on 21.7.1997, which was received by the Authority, and, therefore, the application under section 28A of the Act was filed within time. It was specifically stated in the application that certified copy of the judgment and award of the Reference

Court was not made available to the petitioner and, to comply with the requirement of Section 28A of the Act, the application was required to be made within three months and, therefore, the petitioner made the application so that there may not any occasion to the Authority to reject the application as being time-barred. It is further submitted in the application that as and when the petitioner receives the certified copy of the judgment and award, he would supply the same to the Authority. It is, therefore, submitted that, when the petitioner made the application under Section 28A of the Act within time, i.e. within three months, there was no question of rejecting the application of the petitioner on the ground that the advocate for the petitioner has submitted certified copy of the judgment and award of the Reference Court after the prescribed period of limitation.

9.1 The learned advocate for the petitioner further submitted that Section 28A is a beneficial provision and it is to be construed liberally. He has relied upon the Statement of Objects and Reasons of Section 28A of the Act, which has been reproduced by the Supreme Court in the case of Union of India and another vs. Pradeep Kumari and others, reported in (1995) 2 Supreme Court Cases 736, which read as under (para 4, page 740):
" The object underlying the enactment of these provisions, as indicated in the Statement of Objects and Reasons, was:
(ix) Considering that the right of reference to the civil court under Section 18 of the Act is not usually taken advantage of by inarticulate and poor people and is usually exercised by the comparatively affluent landowners and that this causes considerable inequality in the payment of compensation for the same or similar quality of land to different interested parties, it is proposed to provide an opportunity to all aggrieved parties whose land is covered under the same notification to seek redetermination of compensation, once anyone of them has obtained orders for payment of higher compensation from the reference court under Section 18 of the Act."

9.2 The learned advocate for the petitioner has relied upon paragraphs 10 and 11 of the aforesaid judgment (on pages 742 and 743), which read as under:

9.2.A "10. It is possible to visualise a situation where in the first award that is made by the court after the coming into force of Section 28-A the enhancement in the amount of compensation by the said award is not very

significant for the reason that the person who sought the reference was not able to produce adequate evidence in support of his claim and in another reference where the award was made by the court subsequently such evidence is produced before the court and a much higher amount is awarded as compensation in the said award. By restricting the benefit of Section 28-A to the first award that is made by the court after the coming into force of Section 28-A the benefit of higher amount of compensation on the basis of the subsequent award made by the court would be denied to the persons invoking Section 28-A and the benefit of the said provision would be confined to redetermination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of Section 28-A. There is nothing in the wordings of Section 28-A to indicate that the legislature intended to confer such a limited benefit under Section 28-A. Similarly, there may be a situation, as in the present case, where the notification under Section 4(1) of the Act covers lands falling in different villages and a number of references at the instance of persons having lands in different villages were pending in the court on the date of coming into force of Section 28-A and awards in those references are made by the court on different dates. A person who is entitled to apply under Section 28-A belonging to a particular village may come to know of the first award that is made by the court after the coming into force of Section 28-A in a reference at the instance of a person belonging to another village, after the expiry of the period of three months from the date of the said award but he may come to know of the subsequent award that is made by the court in the reference at the instance of a person belonging to the same village before the expiry of the period of three months from the date of the said award. This is more likely to happen in the cases of inarticulate and poor people who cannot be expected to keep track of all the references that were pending in court on the date of coming into force of Section 28-A and may not be in a position to know, in time, about the first award that is made by the court after the coming into force of Section 28-A. By holding that the award referred to in Section 28-A(1) is the first award made after the coming into force of Section 28-A, such persons would be deprived of the benefit extended by Section 28-A. Such a construction would thus result in perpetuating the inequality in the payment of compensation which the legislature wanted to remove by enacting Section 28-A. The object underlying Section 28-A would be better achieved by giving the expression 'an award' in Section 28-A its natural meaning as meaning

the award that is made by the court in Part III of the Act after the coming into force of Section 28-A. If the said expression in Section 28-A(1) is thus construed, a person would be able to seek redetermination of the amount of compensation payable to him provided the following conditions are satisfied :

(i) An award has been made by the court under Part III after the coming into force of Section 28-A;

(ii) By the said award the amount of compensation in excess of the amount awarded by the Collector under Section 11 has been allowed to the applicant in that reference;

(iii) The person moving the application under Section 28-A is interested in other land covered by the same notification under Section 4(1) to which the said award relates;

(iv) The person moving the application did not make an application to the Collector under section 18;

(v) The application is moved within three months from the date of the award on the basis of which the redetermination of amount of compensation is sought; and

(vi) Only one application can be moved under Section 28-A for redetermination of compensation by an applicant.

9.2.B 11. Since the cause of action for moving the application for redetermination of compensation under Section 28-A arises from the award on the basis of which redetermination of compensation is sought, the principle that 'once the limitation begins to run, it runs in its full course until its running is interdicted by an order of the court' can have no application because the limitation for moving the application under Section 28-A will begin to run only from the date of the award on the basis of which redetermination of compensation is sought."

9.3 The learned advocate for the petitioner has further relied upon the judgment of the Allahabad High Court in the case of Sukhdeo and others vs. State of U.P. and others, reported in AIR 1992 Allahabad 142, more particularly Paragraph 11 of the said judgment, which reads as under:

9.3.A "11. We now come to the question whether it is imperative that an application under Section 23-A should be accompanied by a certified copy of the award of the Court. No such intention is discernible either expressly or impliedly. In the proviso substantially the provisions as contained in Section 12 of the Limitation Act, 1963 are to be found. Therefore, if an applicant chooses to file a certified copy of the award along with

the application he will be entitled to exclude the time spent in obtaining the copy. However, an application or a certified copy has got to be filed within a period of three months from the date of the receipt of the notice of the award or the date of knowledge of the award either actual or constructive. An application filed within time but unaccompanied by a certified copy of the award cannot be treated even as irregular. It will be a valid application. If the Collector so likes, or if a party wants he may grant time to file a certified copy. For a quicker and expeditious disposal of the application, it will be in the interest of the applicant himself that he should file a certified copy of the award along with his application. The SLAO, therefore, failed to exercise the jurisdiction vested in him by law in rejecting the applications of the petitioners on the ground that they were not accompanied by a certified copies of the award."

9.4 The learned advocate for the petitioner has further submitted that, under the provisions of Section 28-A of the Act, the following days are to be excluded in computing period of three months:
(i) The date on which the award was pronounced by the Reference Court.
(ii) The time requisite for obtaining the copy of the award of the Court.

10. The learned Assistant Government Pleader, Mr. H.P. Hasurkar, for the respondent, has tried to support the order passed by the Special Land Acquisition Officer. However, it may be noted that, on behalf of the Special Land Acquisition Officer, no affidavit-in-reply is filed controverting the factual position narrated by the petitioner in the petition. We have, therefore, relied upon and accepted the factual averments made by the petitioner in the petition.

11. We have considered (i) the Statement of Objects and Reasons of Section 28A of the Act, (ii) provisions of Section 28A of the Act, (iii) judgment of the Supreme Court in the case of Union of India and another vs. Pradeep Kumari and others, reported in (1995) 2 Supreme Court Cases 736, and (iv) judgment of the Allahabad High Court in the case of Sukhdeo and others vs. State of U.P. and others, reported in AIR 1992 Allahabad 142.

12. In this case, the Reference Court passed the award on 29.4.1997. The petitioner submitted application under Section 28A of the Act on 21.7.1997 without certified copy of the award and it was stated in the

application that the certified copy of the award was not made available at that time. Thereafter, the certified copy of the award was submitted on 21.7.2000 to the Special Land Acquisition as soon as it was received. In spite of the aforesaid facts and circumstances of the case, the Special Land Acquisition by his order dated 22.3.2004 has held that, as per the Government guidelines, which is issued by the Revenue Department, the petitioner has not supplied the certified copy of the award within the period of limitation and, therefore, the application was rejected.

13. In our view, the reasoning of the Special Land Acquisition is contrary to and inconsistent with the provisions of Section 28A of the Act as well as the principle laid down by the Supreme Court in the case of Union of India and another vs. Pradeep Kumari and others, reported in (1995) 2 Supreme Court Cases 736. The Special Land Acquisition Officer ought to have considered the Objects and Reasons as to how Section 28A was introduced and also aforesaid judgment of the Supreme Court. In our view, the order of the Special Land Acquisition is contrary to and inconsistent with the principle laid down by the Allahabad High Court in the case of Sukhdeo and others vs. State of U.P. and others, reported in AIR 1992 Allahabad 142. On a plain reading of sub-section (1) of Section 28A of the Act, it applies to only those claimants who failed to seek reference under Section 18 of the Act. Redetermination has to be done by the Collector on the basis of compensation awarded by the Court in the reference under Section 18 of the Act and the application in their behalf has to be made within three months from the date of the award.

14. We are of the view that if application is filed under Section 28A within three months from the date of the award, it cannot be dismissed as not maintainable if other conditions are satisfied merely because certified copy was not produced along with the application under Section 28A.

14.1 From a bare reading of Section 28A of the Act, production of certified copy of the award along with application as provided under Order 41 Rule 1 of Civil Procedure Code (i.e. copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award.

However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy excluded. There may be cases where parties may not be aware of the exact nature of the award of the Court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under S. 28A should always be accompanied with the certified copy.

15. In the present case, the Land Acquisition Officer has relied upon the administrative instruction issued by the Government in rejecting the application of the petitioner.. On the other hand, he has ignored the statutory enactment, i.e. Section 28A of the Act.

15.1 Subject to the provisions of the Constitution, the executive power of the Union extends to all matters in respect of which the Parliament has power to make laws. So also, the executive power of the State extents to all matters in respect of which the State Legislature has power to make laws. [Re: Article 73 and 162 of the Constitution of India.]

15.2 Executive function comprises of both determination of policy as well as carrying out its execution. Since the governmental functions have increased, it is inevitable for the Government to issue administrative instructions for determination of policy and its uniform application. However, the administrative rules, regulations and instructions which do not flow from the statutory force, have no force of law. The Government can fill up the gaps in the statutory rules by issuing administrative instructions. They cannot, however, over reach the Act and the Rules.

15.3 In view of this, the action of the Land Acquisition Officer, relying upon the administrative instruction, which is contrary to and inconsistent with the legislative enactment, is not binding to the respondent-Authority in law and, therefore also, on this additional ground, the order of the Land Acquisition Officer is bad in law. In our view, no Officer of the Government can rely on any administrative instruction which is contrary to and inconsistent with the statutory provision.

16. In the result, the petition is allowed. The order dated 22.3.2004 passed by the Special Land Acquisition Officer, Vadodara, is quashed and set aside. Rule is made absolute with no order as to costs.

17. In view of the aforesaid circumstances of the case, this Court directs respondent No. 1 to consider the application of petitioner under Section 28A of the Land Acquisition Act having been filed within the period of limitation and pass an order in the light of the aforesaid award in accordance with law.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
(swamy)